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INFO AMEMBASSY ANKARA

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E.O. 11652: N/A

TAGS: ETRD, OECD

SUBJECT: TCWP MEETING ON GOVERNMENT PROCUREMENT,
FEBRUARY 17-21

REF: STATE 31989

SUMMARY: MEETING OF TCWP ON GOVERNMENT PROCUREMENT (FEB. 17-21) MARKED BY VERY USEFUL AIRING OF VIEWS OF GOVERNMENTS ON SURVEILLANCE, DISCRIMINATION, AND SETTLEMENT OF DISPUTES. PRODUCT OF DATA-GATHERING EFFORT MAY BE LATER IMPROVED AS A RESULT OF WP'S AGREEMENT THAT SECRETARIAT SHOULD PREPARE ANALYSIS OF SUBMISSIONS INCLUDING INDICATION OF DEFICIENCIES AND INCONSISTENCIES. PROGRESS LIMITED IN OTHER AREAS OF AGENDA. TCWP DISCUSSION CONCLUDED THAT GOVERNMENT PROCUREMENT SHOULD CONTINUE IN PRESENT FORUM. (FYI OUTSIDE MEETING FRENCH CONFIRMED FEBRUARY 19 MEETING IN BRUSSELS FOUND BRITISH ARGUING FOR TRANSFER TO GENEVA. END FYI) END SUMMARY.

1. REPORT TO TC AND NEXT MEETING OF WORKING PARTY: GROUP AGREED CHAIRMAN SHOULD REPORT STATUS OF DISCUSSIONS TO MARCH 4-5 MEETING OF TRADE COMMITTEE BUT NOT ASK FOR ANY NEW MANDATE. NO SUBSTANTIVE DISCUSSION OF GOVERNMENT PURCHASING IS ENVISIONED AT THAT MEETING. A DISCUSSION OF THE RELATIONSHIP OF THE COMMITTEE'S WORK TO THE MTN RESULTED IN THE GENERAL CONCLUSION THAT THE WORK SHOULD CONTINUE IN THE PRESENT FORUM. NEXT MEETING OF WORKING PARTY SCHEDULED FOR WEEK OF APRIL 21. SECRETARIAT REQUESTED PREPARE (A) SYNOPSIS OF DATA SUBMISSIONS AND STATEMENT OF DEFICIENCIES, (B) SUMMARY OF FEBRUARY MEETING, AND (C) NEW TEXT OF DRAFT INSTRUMENT. SECRETARIAT WILL PREPARE AGENDA FOR NEXT MEETING IN CONSULTATION WITH WP CHAIRMAN AND INTERESTED DELEGATIONS. FRENCH EXPRESSED STRONG INTEREST IN DISCUSSING QUESTION OF DEROGATIONS AT NEXT MEETING.

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2. DATA COLLECTION: DESPITE LENGTHY DISCUSSION' US, CANADIAN AND FRENCH DELS FAILED TO CONVINCE WORKING PARTY MEMBERS TO AGREE TO PROVIDE ADDITIONAL DATA ON CONTRACTS UNDER \$200,000 AND GREATER PRODUCT BREAKDOWN. SEVERAL COUNTRIES ARGUED FOR MORE TIME TO ANALYZE EXISTING DATA, SOME SAID MORE DETAILED DATA ON PURCHASES GENERALLY UNAVAILABLE, AND A FEW INDICATED IMPLEMENTATION OF BETTER DATA COLLECTION SYSTEMS THIS YEAR WOULD BE INFEASIBLE. UK STATED FLATLY IT HAD NO MORE DATA

AVAILABLE AND SAW NO NEED FOR FURTHER BREAKDOWN SINCE
UK HAD NO INTENTION OF AGREEING TO THRESHOLD UNDER
\$200,000. US (POMERANZ) AND CANADA (BERNES) ARGUED
FORCEFULLY THAT EXISTING DATA INSUFFICIENT FOR THEIR
GOVERNMENTS TO EVALUATE EFFECT OF IMPLEMENTING CODE.
CANADA AND FRANCE AGREED TO PROVIDE GREATER DATA THAN
REQUESTED IN TFD/TD/792 BUT ONLY ON BASIS OF RECIPRO-
CITY. WP AGREED (A) TO URGE GOVERNMENTS TO COMPLETE
SUBMISSIONS PREVIOUSLY REQUESTED, (B) INSTRUCT SECRET-
ARIAT TO PREPARE SYNOPTIC ANALYSIS OF DATA SUBMITTED
INCLUDING INDICATION OF DEFICIENCIES, (C) TO INSTRUCT
SECRETARIAT TO PREPARE PAPER SUGGESTING FURTHER DATA
NEEDED IN CONSIDERING DRAFT INSTRUMENT, AND (D) TO
RETURN TO SUBJECT AT NEXT MEETING.

3. NON-DISCRIMINATION: EC COMMISSION STATED POSITION
ADOPTED BY EC FOR MTN THAT INSTRUMENT SHOULD ALLOW BUT

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NOT REQUIRE SIGNATORIES TO DISCRIMINATE AGAINST
NON-SIGNATORIES. IDENTIFICATION OF ORIGIN THERE-
FORE NECESSARY, BUT IN EC VIEW COMMON RULES OF ORIGIN
NOT NECESSARY AND WOULD COST GREAT DEAL OF TIME, THOUGH
AGREEMENT ON COMMON RULE AT LATER STAGE NOT EXCLUDED.
US QUERIED WHETHER ABSENCE OF UNIFORM RULE MIGHT LEAD TO
DISCRIMINATION AMONG SIGNATORY COUNTRIES. US SUGGESTED
COMMONLY AGREED STANDARD ALSO MUCH TO BE PREFERRED.
OTHERWISE SUPPLIERS WOULD HAVE LITTLE ASSURANCE THAT
THEIR PRODUCTS WOULD QUALIFY IN PURCHASING COUNTRY.
COMMISSION MAINTAINED THAT EC RULES, BASED ON CONCEPT
OF "SUBSTANTIAL TRANSFORMATION," WERE SUFFICIENTLY
OBJECTIVE AND PLAYED DOWN POTENTIAL FOR DIFFICULTIES,
CITING ABSENCE OF ORIGIN RULES IN GATT NTB INVENTORY AS
SUPPORTING EVIDENCE. OTHER DELS MADE FEW COMMENTS AND
GROUP AGREED TO RETURN TO SUBJECT AT NEXT MEETING.

4. PROVISIONS FOR PROTESTS: AT SUGGESTION OF US, WP
MEMBERS GAVE SUMMARIES OF APPEAL PROCEDURES APPLICABLE
FOR PROTESTS INVOLVING GOVERNMENT PURCHASING. TCWP
CONCLUDED THAT, PROVIDING CERTAIN DRAFTING CHANGES WERE
MADE, PARA 34 OF TC(73)15 COULD STAND WITHOUT BRACKETS.
GERMANS LATER RETRACTED AGREEMENT, BUT AGREED MAKE EFFORT
JOIN CONSENSUS BEFORE NEXT MEETING. BELGIANS ARGUED FOR

NEED TO DISCUSS PROTECTION FOR PURCHASERS AND AGREED TO DO PAPER ON THIS SUBJECT FOR NEXT MEETING.

5. SURVEILLANCE: WP MEMBERS HAD USEFUL EXCHANGE OF VIEWS ON POSSIBLE BALANCE OF ROLES BETWEEN FULL COMMITTEE AND MORE RESTRICTED BODY IN SURVEILLANCE PROCESS WITH EC DELS STRONGLY NEGATIVE ON POSSIBILITY THAT RESTRICTED BODY COULD TAKE "DECISIONS". SEVERAL DELS OPPOSED PROVISIONS CONTAINED IN PARAGRAPH 2C OF ANNEX TO TFD/TD/817. GROUP AGREED, HOWEVER, TO ACCEPT A 2-COLUMN TEXT IN ANNEX OF TFD/TD/817 AS BASIS FOR LIMITED OFFICIAL USE
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FURTHER DISCUSSION.

6. SINGLE TENDERING: SECRETARIAT INCLUSION OF PARA 16 IN REWRITE OF OPENING SENTENCE OF PARA 14 (TFD/TD/812, ANNEX II) PROMPTED US TO PROPOSE GOVERNMENTS PROVIDE INFORMATION ON EACH USE OF SINGLE TENDERING. GERMANS, FRENCH, DANES AND AUSTRALIANS THOUGHT SUCH REQUIREMENT BURDENSOME, UNNECESSARY AND PERHAPS UNFEASIBLE, BUT IN END GROUP AGREED TO ACCEPT NEW BRACKETED SENTENCE AT END OF PARA 14 TO THIS EFFECT. EC DELS ARGUED FOR RETENTION OF WORD "IRREGULAR" IN SUBPARA 14(1) ON BASIS SAME WORD USED IN EC DIRECTIVE. US ARGUED FOR SUBSTITUTION OF "COLLUSIVE" BUT NO AGREEMENT WAS REACHED. US OPPOSED UK DESIRE TO RETAIN STANDARDIZATION EXCEPTION IN 14(3) AND UK AGREED TO RECONSIDER POSITION. US AGREED TO DELETION OF "GEOGRAPHICAL" WITH UNDERSTANDING OF TCWP THAT NEGOTIATING HISTORY WOULD INDICATE REMAINING LANGUAGE COVERS US PROBLEM. VAGUENESS OF PARAS 14(5)A AND C LED EC DELS TO AGREE TO RECONSIDER TEXT IN LIGHT OF WORK ON EC DIRECTIVE. EXCEPT FOR BELGIANS, WHO AGREED TO REVIEW POSITION, TCWP AGREED TO DROP 14(5)B. UK AND AUSTRALIA SUPPORTED RETENTION OF 14(6) (ADD-ON PURCHASES), BUT THEY AGREED TO REDRAFT SO AS TO LIMIT SCOPE FOR ABUSE AND EMPHASIZE "UNEXPECTED" NATURE OF PURCHASE. COMMISSION REP INSISTED ON RETENTION OF 14(7) (COMMODITY EXCHANGE PURCHASES).

7. EXCEPTIONS: CANADIANS AGREED TO DROP REQUEST FOR EXCEPTION FOR "PURCHASES ON BEHALF OF NON-SIGNATORIES" ON BASIS THAT CANADIAN COMMERCIAL CORP. IS COVERED BY TIED AID CLAUSE. UK ALSO AT FIRST AGREED TO DROP EXCEPTION ON BASIS CROWN AGENTS WERE ENTITIES OUTSIDE SCOPE OF INSTRUMENT, BUT LATER RECALLED. SWEDES NOTED THEIR PURCHASES FOR OTHERS NOT STRICTLY TIED AID AND THEREFORE ASKED ITEM BE LEFT OPEN. COMMISSION DEFENDED "INTERNATIONAL ORGANIZATION" EXCEPTION AND IT WAS ALSO LEFT AS IS.

8. AID TO SMALL BUSINESS: JAPANESE GAVE EXTENSIVE
EXPLANATION OF JAPAN'S LAW ON AID TO SMALL AND MEDIUM-
SIZED BUSINESSES, DESCRIBED IN TFD/TD/830. JAPANESE REP
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NOTED TARGET FOR SMALL BUSINESS CONTRACTS BASED ON PAST
EXPERIENCE AND SAID TARGET WAS ONLY 28 PERCENT OF GOVERN-
MENT PURCHASES, COMPARED TO 50 PERCENT SHARE HELD BY
SMALL BUSINESS IN TOTAL JAPANESE MANUFACTURING SALES.
SWEDISH AND COMMISSION REPS OBJECTED TO DISCUSSION ON
INTERNAL POLICY IN TFD/TD/819. GROUP AGREED TO DISCUSS
THIS DOCUMENT AT NEXT MEETING.

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9. SPECIAL CONDITIONS: US SUGGESTED SUBJECT OF INTERNATIONAL COLLABORATIVE PROJECTS BE DISCUSSED AS GENERAL DEROGATION, WHILE SUBCONTRACTING COULD BE REMOVED TO ANOTHER PART OF INSTRUMENT, LEAVING MIDDLE OF PARA 32 OF TC(73)15 STANDING WITHOUT BRACKETS. SWEDEN AND UK SUPPORTED, BUT DANES AND BELGIANS PUT UP MANY OBJECTIONS. IN END US SUCCEEDED IN REMOVING SUBCONTRACTING PHRASE, REPLACING IT BY NEW PHRASE IN PARA 18 (BETWEEN G AND H-- "WHETHER THE USE OF PARTICULAR SUBCONTRACTORS WILL BE REQUIRED FOR ITEMS TO BE INCORPORATED IN MAIN CONTRACT". CANADA OUTSIDE MEETING INFORMED US OF INSTRUCTION THAT IF OTHER BRACKETS REMOVED CANADA WOULD HAVE TO REQUEST BRACKETING OF CENTRAL PORTION BECAUSE OF REFERENCE TO OFFSETS. RESULT WAS THAT TCWP AGREED TO BRACKET ALL REMAINING LANGUAGE IN PARA 32.

10. TELEX BIDS: GROUP DELETED FIRST VERSION LAST PART OF PARA 20 IN TC(73)15 AND RETAINED SECOND VERSION IN BRACKETS FOR DISCUSSION AT NEXT MEETING.

11. BID OPENINGS: CANADIANS TABLED NEW TEXT SECOND PART OF PARA 27 OF TC(73)15 DESIGNED TO REPLACE EXISTING THREE VERSIONS. AUSTRALIANS INSISTED ON RETAINING PRESENT VERSION 2 AND GERMANS INDICATED THEY WOULD PRESENT

NEW TEXT AT NEXT MEETING. GROUP AGREED TO DELETE
PRESENT VERSIONS 1 AND 3 AND RETAIN VERSION 2 PLUS
CANADIAN TEXT.
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